IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 708 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMBHAU GHODU PASTE - Applicant(s)

Versus

THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MITESH R AMIN for Applicant(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 19/09/2005

ORAL JUDGMENT

1. Leave to delete respondent No.2 since he is not a necessary party to decide the question involved in this revision application.

2. Rule. Mr. HM Prachchhak, learned APP appears and waives service of notice of rule on behalf of respondent No.1 – State.

3. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the petitioner/original accused seeks to challenge the order dated 28.7.2005 rendered in Criminal Appeal No.56 of 2004 by the learned Additional Sessions Judge, Court No.12, City sessions Court, Ahmedabad, by which the appeal filed by the petitioner has been allowed on the basis of the compromise arrived at between the petitioner/ original accused and respondent No.2/original complainant who has been deleted in this proceeding and accordingly the judgment and order dated 15.10.2004 rendered in Criminal Case No.2683 of 2002 by the learned Metropolitan Magistrate, Court No.18, Ahmedabad City convicting and sentencing the petitioner for commission of the alleged offence under section 138 of the Negotiable Instruments Act ('the Act' for

short) has been quashed and set aside. By the impugned judgment and order passed by the learned Metropolitan Magistrate, the petitioner has been sentenced to suffer simple imprisonment for four months and to pay fine of Rs.5,000/- and in default of payment of fine, simple imprisonment for further period of 15 days.

4. Respondent No.2 who has been deleted from this proceeding had filed Criminal Complaint before the learned Metropolitan Magistrate, Court No.18, Ahmedabad City against the petitioner herein for commission of the alleged offence under Section 138 of the Act. At the end of the trial, the learned Metropolitan Magistrate convicted the petitioner for the offence under section 138 of the Act and accordingly the petitioner was sentenced to suffer simple imprisonment for a period of four months and to pay fine of Rs.5,000/- and in default of payment of fine, to suffer simple imprisonment for further period of 15 days.

5. Aggrieved thereby the petitioner filed Criminal

Appeal No.56 of 2004 before the City Sessions Court, Ahmedabad. At the time of hearing of the appeal, the petitioner/original accused and respondent No.2/original complainant who has been deleted from this proceeding, entered into a compromise. As the offence is compoundable under section 147 of the Act and by way of the said settlement the petitioner has paid the entire amount of Rs.76,000/- due and payable to the original complainant/respondent No.2 for which the petitioner had issued cheque which was dishonored and as a consequence thereof the complaint came to be filed, the learned Additional Sessions Judge, Court No.12, City sessions Court, Ahmedabad recorded the compromise and accordingly the conviction and sentence was set aside. However, the learned Additional Sessions Judge, Court No.12, City Sessions Court, Ahmedabad, has forgotten to quash and set aside the order for payment of fine which has given rise to the present petition.

6. This Court has considered the submissions advanced by Mr. Mitesh R. Amin, learned advocate of the petitioner and Mr. HM Prachchhak learned APP for

respondent No.1 – State, perused the impugned judgment and order and the provisions contained under the Act.

7. There is no dispute that as per the provisions contained under section 147 of the Act, offence under section 138 of the Act can be compounded at the instance of the original complainant and in the instant case, the original complainant who was respondent No.2 in this proceeding and the petitioner herein entered into a compromise at the time of hearing of the Criminal Appeal No.56 of 2004 filed by the petitioner and as per the said compromise the petitioner has paid Rs.76,000/- to original complainant which was payable to him by the petitioner as he had issued cheque for the said amount which came to be dishonored on presentation by respondent No 2 and, therefore, the learned Additional Sessions Judge, Court No.12, City Sessions Court, Ahmedabad has quashed and set aside the order of conviction and sentence but at the same time the learned Additional Sessions Judge ought to have quashed and set aside the imposition of fine of

Rs.5,000/- on the petitioner. However, it appears that through inadvertent mistake the learned Additional Sessions Judge has forgotten to quash and set aside the said order and hence this revision application is filed under section 397 of the Code and, therefore, this petition deserves to be allowed by quashing and setting aside the imposition of fine on the petitioner by rectifying the mistake crept in the order passed by the learned Additional Sessions Judge.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The judgment and order dated 15.10.2004 passed by the learned Metropolitan Magistrate, Court No.18, Ahmedabad imposing fine of Rs.5,000/- upon the petitioner is also quashed and set aside, the result of which is that the petitioner shall be refunded the fine of Rs.5,000/- deposited by him and accordingly the learned Metropolitan Magistrate, Court No.18, Ahmedabad is hereby directed to refund the amount of Rs.5,000/- to the petitioner which has been deposited by him towards the fine, upon due verification.

9. Rule is made absolute to the aforesaid extent. D.S. is permitted.

(A.M. Kapadia, J.)

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